

SPECIAL MEETING

March 22, 2004

The Special Meeting of the Annapolis City Council was held on March 22, 2004 in the Council Chamber. Mayor Moyer called the meeting to order at 7:00 p.m.

Present on Roll Call: Mayor Moyer, Aldermen Hammond, Tolliver, Kelley, Cordle, Fox, Alderwomen Hoyle, Carter

Alderman Cohen was absent.

Staff Present: City Attorney Spencer

C Alderman Fox moved to amend the agenda by adding O-7-04 for Legislative Action. Seconded. CARRIED on voice vote.

PUBLIC HEARINGS

ORDINANCE

O-8-04 For the purpose of amending the current lease with the Chesapeake Children's Museum, Inc., for the facility located as 25 Silopanna Road to permit overnight stays; and matters generally relating to said lease.

Spoke in favor of the ordinance:

Deborah Wood, 1332 Swan Drive, Annapolis, Maryland 21401
Dawn Maltese, 1704 Smugglers Run, Annapolis, Maryland 21401
Renee Spears, 55 East Joyce Lane, Arnold, Maryland 21012
Scott Preston, 1522 Hickory Wood Drive, Annapolis, Maryland 21401

No one else from the general public spoke in favor of or in opposition to the ordinance.

Mayor Moyer declared the public hearing closed.

LEGISLATIVE ACTION

ORDINANCE

O-7-04 For the purpose of authorizing a lease of certain municipal property located in the harbor and Dock Street areas to the Maritime Heritage Festival, Inc., a body corporate, for a certain period of time, subject to certain terms, provisions, and conditions, for the purpose of conducting a maritime festival; and all matters relating to said lease.

Alderman Fox moved to adopt O-7-04 on second reading. Seconded.

The Economic Matters Committee reported favorably on O-7-04 with a revised lease.

Alderman Tolliver moved to substitute the Economic Matters Committee Revised lease as follows:

REVISED LEASE AGREEMENT

O-07-04

THIS LEASE AGREEMENT is made this ____ day of _____, 2004¹³, by and between **THE CITY OF ANNAPOLIS**, a municipal corporation of the State of Maryland

(hereinafter called "Lessor") and **MARYLAND MARITIME HERITAGE FESTIVAL, INC.** ~~THE ANNAPOLIS AND ANNE ARUNDEL COUNTY CHAMBER OF COMMERCE, INC.~~, a Maryland non-profit corporation (hereinafter called "Lessee").

WHEREAS, the Maryland Maritime Heritage Festival is a locally recognized event which showcases the maritime heritage and maritime industry of Annapolis and the region; and

WHEREAS, Lessee desires to hold the Maryland Maritime Heritage Festival upon certain public property owned by Lessor in order to promote the maritime heritage and maritime industry of Annapolis and the region; and

WHEREAS, Lessor desires to enter into a Lease with Lessor for that purpose and to set forth the responsibilities of Lessee and Lessor related thereto.

NOW, THEREFORE, FOR AND IN CONSIDERATION of the foregoing premises and the mutual terms and conditions contained herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, Lessor and Lessee hereby agree as follows:

ARTICLE I

Section 1.1. Premises and Term: Subject to the provisions and terms of this Agreement, Lessor hereby leases to Lessee, for the purpose of holding the Maryland Maritime Heritage Festival, that property described in this Section as more particularly shown on Exhibit A hereto, which is attached hereto and made a part hereof (hereinafter called the "Premises"), for the times indicated:

A. The designated area of the City Dock and Susan Campbell Park from **Friday, April 29, 2004 to Monday, May 3, 2004** ~~May 3, 2003 to May 4, 2003;~~

B. Portions of the Harbor and City Dock from **May 1, 2004 to May 2, 2004** ~~May 1, 2003 to May 5, 2003;~~ and

C. Parking spaces adjacent to the Harbormaster's office to be designated by the Police Chief or his designee based upon a demonstrated need by Lessee from **Friday, April 29, 2004 to Monday, May 3, 2004** ~~May 1, 2003 to May 5, 2003.~~

Section 1.2. Rent: The rent shall be One Dollar (\$1.00). Pursuant to City Code, Section 6.04.210.D.3., the City hereby waives any additional Rent (including but not limited to fees for traffic control services if any provided, parking meters authorized for use by Lessee, inspections, permit applications and rental beyond that stated above), except as provided herein.

Section 1.3. Use of Premises: The Premises may be used by Lessee for Maryland Maritime Heritage Festival activities and race support purposes. Lessor's agreement to lease the herein identified property to Lessee, in no way creates an obligation for Lessor to

furnish any services, materials or equipment (including for example dock facilities) for the Maryland Maritime Heritage Festival, except as specifically provided in Article III hereof.

Section 1.4 Administrative: Modifications: The parties may, at any time, modify the following terms (but no other terms) of this Lease Agreement

A. The property or properties to be used and occupied, provided such modifications do not result in an increase or enlargement of the specified properties or alter the areas identified as the Premises herein above; and

B. The dates and hours during which such property will be used, provided such modifications do not result in an increase or enlargement of the dates or times set forth herein above; and

3. Tenant's obligations with regard to security on the Premises and the payment of fees for City inspections of the Premises as provided in section 3.6 hereof. Following a request by either party for such a modification, pursuant to City Charter, Art.. III, Sec, 8, the Mayor may negotiate and agree to or reject same on behalf of the Lessor without the necessity of an additional ordinance approving that modification. Any such modification shall be set forth in a letter of understanding executed by the parties and appended to this Lease Agreement.

ARTICLE II

Section 2.1. Liquor Sales: Provided it shall first obtain all necessary licenses from the Alcoholic Beverage Control Board (ABCB), Lessee may serve beer, wine and/or liquor at a private reception to which the public shall not be admitted in the area of the City Dock and Susan Campbell Park at such locations therein and on/at such dates, time and places and under such terms authorized by the ABCB. The City makes no representations with respect to Lessee's ability to obtain any such license. If such a license is issued, then in addition to such other limitations that may be imposed by the ABCB, the following limitations and requirements shall be the sole responsibility of Lessee:

A. The beer, wine and liquor consumption area shall be restricted to a tented area so as to restrict beer, wine and liquor consumption to the tented area.

B. There shall be no beer, wine or liquor consumption or other open containers of alcoholic beverages outside of the tented area.

Section 2.2 Music: Lessee may have live music on the Premises. In addition to such other requirements that may be imposed by the ABCB, Lessee shall take all reasonable measures to keep the music from being heard beyond the Spa Creek end of Susan Campbell Park.

Section 2.3 Hours of Operations: Lessee may operate festivities on the Premises as set forth on ~~Exhibit A hereto~~ in HOURS OF OPERATION - OPEN TO PUBLIC below. Lessee shall conduct its operations in an orderly and commercially reasonable manner so as

not to annoy, disturb (whether via noise or otherwise), endanger or be offensive to others. Lessee shall use and maintain the Premises in such manner so as to avoid the creation of any nuisance from obnoxious odors, smoke, noxious gases, vapors, dust, noise or otherwise, and Lessee shall not keep, store, display or use any explosives or explosive devices at the Premises. Lessee shall maintain the Premises in a clean, orderly and safe condition so as to avoid injury to persons and property. Should Lessee fail to comply with the terms of this provision, Lessor shall have the authority to require Lessee to immediately cease and desist all activities and operations on the Premises.

Section 2.4 Exhibitor List: Lessee shall provide to the City Administrator not later than April 18, 2003 a complete list of all exhibitors, displays, activities, festivities, music, entertainment and operations to take place on the Premises during the term hereof. The list shall not be amended, except for deletions thereto, without the expressed written consent of the City Administrator.

Section 2.5 Exhibitor Licenses/Taxes: Exhibitors who sell merchandise at the Maryland Maritime Heritage Festival shall obtain all required non-City licenses and pay all required federal, state and county and City taxes and fees. This Lease shall satisfy any City licensing requirements for such exhibitors.

Section 2.6. Food and Beverage Sales: Neither Lessee nor any exhibitor or any other person on the Premises shall offer any food or alcoholic beverage for sale to the public during the term of this Lease except as specifically provided herein.

ARTICLE III

Section 3.1. Facilities and Services: In addition to the use of the Premises during the term set forth above, Lessee shall have use of the facilities and services set forth in this Article under the terms and conditions provided herein.

Section 3.2. Security Services: Lessee shall be responsible for security within the Premises during the term hereof. Lessee shall establish a security liaison with the Annapolis Police Department ("APD") and coordinate all Premise's security with APD according to APD's requirements. In addition to such other requirements as may be imposed by the APD, Lessee shall, at its sole expense, hire licensed professional security officers to provide security within the Premises during the entire term of this Lease at such staffing levels as the APD may, in its discretion, require.

Section 3.3. Fire Services: Following the erection of all booths and other festivities' structures as described under Section 6.1 hereof but before the festival opens to the public, the parties shall meet at the Premises to assure compliance with Fire Department regulations and accessibility of fire lanes and turning radius. No burning, welding, open flame devices or running of watercraft propulsion engines shall be permitted on the Premises.

Section 3.4. Utilities: Lessor shall make available to the Premises, existing water

and electricity facilities. Lessee at its own expense shall install any temporary electrical equipment, lines and devices required to provide power to the Premises, in compliance with National Electric Code. Lessee shall not operate any such equipment, lines or devices until inspected and approved by the City Department of Public Works.

Section 3.5. Other Services: The parties shall coordinate other services in advance of the term of this Lease provided, however, that Lessee shall assume any and all financial responsibility for any such other services as may be required by Lessor.

Section 3.6. Pre-Festivities Inspection: Before the festival opens to the public, Lessee's representative shall meet with representatives of the Annapolis Police Department, Annapolis Fire Department, Director of Emergency Management, Harbormaster, Annapolis Central Services and Annapolis Department of Public Works and inspect the Premises and nearby areas to determine compliance with City requirements. Written approval by representatives of all such inspectors is required before Lessee may open the festival or Premises to the public. Lessor shall not refuse permission to open the festival or any part thereof under this paragraph unless a threat to health or safety has been identified by Lessor to Lessee. Lessor shall make every effort to limit that part of the festival or Premises not opened in the event of such threat and to allow Lessee to open the closed portion of the festival or the Premises as soon as the threat is abated to Lessor's satisfaction. Lessee shall pay Lessor an administrative fee of Five Hundred Dollars (\$500.00) for the cost of such inspections.

Section 3.7. Notice to Correct: Following the inspection referred to in the preceding section, at all times during the term of this Lease, and during festivities on the Premises, Lessee shall promptly comply with all reasonable directives of the City intended to bring Lessee and festivities on the Premises into compliance with the requirements of this Lease and the City Code, as well as the public safety requirements of the Police Department, Fire Department and Harbormaster.

ARTICLE IV

Section 4.1. Insurance: Lessee shall, at its own expense, obtain and keep in full force and effect comprehensive commercial general liability insurance of no less than One Million Dollars (\$1,000,000.00) combined single limit, bodily injury and property damage; and Three Million Dollars (\$3,000,000.00) umbrella policy; which shall be effective during the entire period of time during which the Lessee shall use or occupy the Premises, or any part thereof.

Such insurance policy shall specifically name the City of Annapolis, and in their capacity as such, the officers, agents and employees thereof, as additionally insured, and insure against any and all loss, costs, damages, and expenses suffered by any person, or to any property, including property owned by Lessor, due to or alleged to be due to: (1) an act, omission or the negligence of Lessee, its officers, agents, employees contractors, patrons,

guests or invitees; or (2) to the use of the Premises, or any part thereof by Lessee, its officers, agents, employees, contractors, patrons, guests or invitees.

The insurer or insurers of the policy or policies referred to in the preceding paragraph shall be: authorized to write the required insurance; approved by the Insurance Commissioner of the State of Maryland; and subject to the reasonable approval of the City Attorney of Annapolis. The form and substance of the policy or policies of insurance shall also be subject to reasonable approval by the City Attorney of Annapolis, and shall be submitted to the City Attorney for such approval not later than April 15, 2003. Said policy or policies of insurance shall be filed by Lessee with the City Attorney of Annapolis not later than the first to occur of : 10 days prior to the first day of the term set forth above; 10 days prior to Lessee's occupancy of the Premises.

The Certificate for each such insurance policy shall contain a statement on its face that the insurer will not cancel the policy or fail to renew the policy, whether for nonpayment of premium, or otherwise, whether at the request of Lessee or for any other reason, except after thirty (30) calendar days advance written notice mailed by the insurer to the City Attorney of Annapolis and that such notice shall be transmitted postage prepaid, with return receipt requested.

ARTICLE V

Section 5.1. Hold Harmless/Indemnity: Lessee agrees that it shall forever indemnify, defend and hold harmless the Lessor, its officers, agents, employees, from and against any and all claims, suits, actions, judgments, and liability for loss, injury, damages and/or expenses suffered or alleged to have been suffered by any person or to any property due to or alleged to be due to: (1) an act, omission or the negligence of Lessee, its officers, agents, employees, contractors, patrons, guests or invitees; or (2) the use of the Premises, or any part thereof, by Lessee, its officers, agents, employees, contractors, patrons, guests or invitees.

Lessee agrees to reimburse Lessor, within thirty (30) days after demand for such reimbursement, for any damage done to Lessor's buildings, facilities, equipment or property caused by the negligence of Lessee, its officers, agents, employees, contractors, patrons, guests or invitees during Lessee's use and/or occupancy of the Premises or any part thereof.

ARTICLE VI

Section 6.1. Interior Construction: Lessee shall have the right to construct, install or erect upon the Premises such seats, booths, tents, exhibits and any other apparatus or structure which Lessee may deem necessary or desirable for its purposes. Lessee shall not have the right to enclose the Premises in such a manner as to limit entry onto the Premises or any part thereof, except to enclose the beer, wine and/or liquor consumption area.

Section 6.2. Permits: Subject to the inspection provisions of Article III and to

standard alcoholic beverage, public safety and health approvals, any and all zoning permits, any and all licenses or authorizations required to be obtained from the City of Annapolis or any agency thereof by the Lessee for the purpose of constructing or erecting the temporary structures described in Section 6.1 above or for operating the festival shall be deemed granted and issued upon the execution of this Lease by the Lessor and Lessee. All other Federal, State or County permits which may be required shall be the responsibility of the Lessee.

ARTICLE VII

Section 7.1. Trash: Lessee, at its sole expense, shall provide the number of trash containers within the Premises as required by the Director of Public Works in his sole discretion during the entire occupancy period of the Premises and shall provide for the prompt removal of said containers, trash and refuse by a City-approved waste-removal contractor.

Section 7.2. Cleanliness: Lessee, at its sole expense, shall be responsible for keeping the Premises free of unnecessary trash and refuse and shall place the same in the trash containers referred to in the preceding section. Lessee shall at all times during the occupancy of the Premises police the Premises for trash and refuse removal.

Section 7.3. Sanitation and Toilets: Lessee, at its sole expense, shall provide adequate and sanitary toilet facilities throughout the Premises for use by the general public and others attending or participating in the festivities, at the locations designated by the Director of Public Works in his sole discretion.

ARTICLE XIII

Section 8.1. Quiet Enjoyment: Lessor covenants with Lessee that at all times during the term of this Lease Agreement, Lessee shall peacefully hold and quietly enjoy the Premises in a manner consistent with the terms of this Lease without any disturbance or hindrance from Lessor or from any other person claiming through Lessor, except that the Lessor or others claiming through the Lessor may enter onto the Premises to effect necessary repairs to their own facilities as reasonably contemplated by the terms of this Agreement, to assure compliance with the terms of this Agreement and for public safety reasons. Lessee shall cooperate with the Lessor to effect this access to the Premises.

ARTICLE IX

Section 9.1. Condition of Premises After Festival: Following its occupancy of the Premises, Lessee, at Lessee's sole expense, shall return the Premises in the same or superior condition than received, natural wear and tear excepted.

Section 9.2. Lessee's Equipment After Festival: Prior to the expiration of the term of this Lease, Lessee shall remove all property, fixtures and chattels from the Premises placed thereon in conjunction with the festival. In the event that Lessee, its officers, agents,

employees or contractors fail to remove any such item of property, Lessor reserves the right to remove and store any such property after the expiration or termination of this Lease at Lessee's expense or, as an alternative, to leave the property at the Premises. In either case, Lessor shall charge Lessee per diem rental for storage of such property. Lessor shall bear no responsibility or liability for damage to or expense incurred as a result of property left, removed or stored under the provisions of this Section. Lessee shall pay to Lessor any expenses or charges under this Section within thirty (30) days after delivery of any bill by Lessor to Lessee. If any property is not claimed by Lessee within sixty (60) days of the Lease term, Lessor may sell same at private or public sale under such terms as Lessor may deem appropriate in its sole discretion and apply such proceeds as it may deem appropriate in its sole discretion.

Section 9.3. Post-Festival Inspection: Within two (2) days following the expiration of the term of this Lease, Lessee shall accompany Lessor's representative during a tour of the Premises to determine the condition thereof. If Lessee fails to participate in the two or when scheduled, Lessor may conduct a tour without Lessee's participation. Items corrected or repaired by the Lessor, deemed by Lessor to be the responsibility of Lessee, shall be billed by the Lessor and paid by the Lessee within thirty (30) days after receipt of such bill.

ARTICLE X

Section 10.1. Remedies: It is understood and agreed that any and all duties, liabilities and/or obligations imposed upon or assumed by the Lessee and Lessor by or under this lease shall be taken or construed as cumulative and that the mention of any specified duty, liability or obligation imposed upon or assumed by Lessee or Lessor under this lease, shall not be taken or construed as a limitation or restriction upon any or all of the other duties, liabilities, or obligations imposed upon or assumed by the Lessee under this Lease and that all remedies provided herein shall be construed to be cumulative and in addition to any other remedies provided herein, or any remedies provided in law or equity which the Lessor or Lessee would have in any case. It is understood and agreed that either party shall have the right to seek and obtain in any court of competent jurisdiction an injunction without the necessity of posting a bond to restrain a violation by the other party of any covenant or covenants contained in this Lease, anything to the contrary notwithstanding. In no case shall a waiver by either party of the right to seek relief under this provision constitute a waiver of any other or further such right. The remedies provided hereunder shall not be deemed exclusive of other remedies not specified.

Section 10.2. Authority to Lease: In the event that it is ever determined by a court of competent jurisdiction that Lessor lacks the authority to lease any portion or all of the property herein intended to be leased, Lessor shall not be liable for any losses or damages sustained by Lessee as a result thereof.

Section 10.3. Immunities: Notwithstanding any provision in this Lease, implicitly or explicitly to the contrary, Lessor reserves any and all immunities, partial or total, statutory or common law, in any proceeding related to this Lease, to the festivities referred to herein or to the use of the Premises (or any part thereof) before, during or after the term of this Lease. Such reservation of rights shall extend to any claim made by or through Lessee and to any claim made by or through any third party.

ARTICLE XI

Section 11.1. Impossibility of Performance: If, for any reason, an unforeseen event not the act of Lessor occurs, including but not limited to flood, severe weather, fire, casualty, act of God, labor strike or other unforeseen occurrence which renders impossible the fulfillment of any rental period of this lease, Lessee shall have no right to nor claim for damages against Lessor; but Lessee shall not be liable for the payment of rent for said rental period, except that if such impossibility relates only to part of the rental period, rent shall be prorated; however, this Lease shall not terminate but shall continue in accordance with the terms of this Lease.

ARTICLE XII

Section 12.1. Payment: Lessee shall make all payments due under this Lease by check, payable to the City of Annapolis, and deliver the payments to the Annapolis Finance Department, 160 Duke of Gloucester Street, Annapolis, Maryland, 21401. In addition to all other amounts due hereunder, Lessee shall pay Lessor a monthly late fee of 1.5% (18% per annum) of any payment required hereunder that is more than sixty (60) days past due, until paid.

ARTICLE XIII

Section 13.1. Time is of the Essence: Time is of the essence in the performance of this Lease, and the times herein granted shall not be extended for any reason, except as provided herein, for the occupancy or use of the Premises or for the installation or removal of equipment, materials or displays therefrom without written permission from Lessor.

ARTICLE XIV

Section 14.1. Assignment: Lessee shall not assign or transfer this Lease, in whole or in part, or any of its rights hereunder, without the prior written consent of the Lessor, which consent shall not be arbitrarily withheld.

ARTICLE XV

Section 15.1. Non-Agent: Lessee herein is an independent contracting party and not the agent or employee of the Lessor.

ARTICLE XVI

Section 16.1. Liens, Remedies, etc: Lessee hereby consents to and Lessor shall

have a lien upon all goods, personal property and fixtures of Lessee located upon the leased Premises for any and all unpaid charges which arise under this Lease. Lessee hereby consents to and Lessor shall have the power to impound and retain the possession of such goods, personal property and fixtures until all such charges and fees due under this Lease have been paid, in full, to the satisfaction of Lessor. In the event such charges remain unpaid thirty (30) days after the termination of the term of this Lease, Lessor shall have the power to sell such property at public auction, and apply the receipts from such auction to all such unpaid charges.

ARTICLE XVII

Section 17.1. Compliance with All Laws: Lessee agrees to comply with all laws, ordinances, and statutes applicable to the Premises, or any part thereof, and the use thereof, and to pay all taxes or charges imposed by law in connection with Lessee's use and occupancy of the Premises.

ARTICLE XVIII

Section 18.1. Contact Persons: For purposes of coordinating inspections, providing notices and other matters set forth under this Lease, except as otherwise provided in this Lease, the parties designate the following contact persons:

- A. Lessor: City Administrator
160 Duke of Gloucester Street
Annapolis, Maryland 21401
Phone No. 410-263-7939
- B. Lessee: Annapolis & Anne Arundel County
Chamber of Commerce, Inc.
Maryland Maritime Heritage Festival, Inc.
151 West Street, Suite 101
Annapolis, Maryland 21401
Attention: Bob Burdon

ARTICLE XIX

Section 19.1. Local Exhibitors: Lessee shall use its best efforts to contract with Annapolis exhibitors in all matters related to the festival.

ARTICLE XX

Section 20.1 General Powers: Nothing herein shall be construed to preclude the City from exercising its general public safety powers as it deems appropriate to protect the public safety, interest and welfare.

ARTICLE XXI

Section 21.1 Authority: This Lease Agreement is authorized by Ordinance **O-7-04.**

HOURS OF OPERATION - OPEN TO PUBLIC

Dates	Exhibits and Entertainment Times
May 13, 2004	10:00 AM to 6:00 PM
May 24, 2004	10:00 AM 12:00 Noon to 6:00 PM

IN WITNESS WHEREOF, the parties hereto, by and through this duly authorized agents, have caused this Lease to be executed this lease this _____ day of _____, 2004.

ATTEST:

CITY OF ANNAPOLIS

Deborah Heinbuch, MMC
City Clerk

BY: _____
ELLEN O. MOYER, MAYOR

MARYLAND MARITIME HERITAGE FESTIVAL, INC .

WITNESS

BY: _____
Robert Burdon, PRESIDENT
Address: 151 West St, Annapolis
Phone: 410-268-7676

Seconded. CARRIED on voice vote.

The main motion with a Revised lease CARRIED on voice vote.

Alderman Hammond moved to adopt O-7-04 with a Revised lease on third reading.
Seconded. CARRIED on voice vote.

RESOLUTION

R-5-04 For the purpose of requesting an amendment to proposed State legislation to allow the City to collect and retain certain sales and use tax revenues and to dedicate them to public safety in the City; and all matters relating to said budget and program.

Alderman Fox moved to adopt R-5-04 on second reading. Seconded. CARRIED on voice vote.

Upon motion duly made, seconded and adopted, the meeting was adjourned at 7:34 p.m.

Deborah Heinbuch, MMC
City Clerk